

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No.3821 of 2018

Date of Decision: 31.05.2018

Ajay Singal

.....Petitioner

Vs

Sameer Singal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Gaurav Mohunta, Advocate and
Mr. Gaurav Gogna, Advocate
for the petitioners.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed the order dated 22.05.2018 passed by the Civil Judge (Junior Division), Ambala, vide which application filed by the petitioner/defendant No.1 under Order 7 Rule 11 CPC was rejected.

[2]. Plaintiff filed a suit for possession by way of partition, claiming himself to be a co-sharer to the extent of half share along with mesne profit and possession. Petitioner has staked his claim under Order 7 Rule 11 CPC on the ground that the plaint does not disclose any cause of action and the same is barred by limitation as well.

[3]. The consideration of the entitlement of the plaintiff with reference to Will and mutations No.4390 and 4385 executed in favour of defendant No.1 after the death of Kidar

Nath would be gone into by the trial Court with reference to evidence to be led by the parties at the appropriate stage. The plea of the plaintiff that aforesaid mutations were got sanctioned by defendant No.1 at his back on the basis of Will dated 16.06.1982 executed by Kidar Nath would also be gone into by the trial Court at the relevant time on the basis of nature of evidence to be led by the parties.

[4]. At this stage of the proceedings under Order 7 Rule 11 CPC, only averments made in the plaint are to be seen. The cause of action as pleaded by the plaintiff in the plaint cannot be scuttled at this stage as the same is dependent upon so many factors being mixed question of law and facts. Similarly plea of limitation for filing the suit in the capacity of co-owner would also be debated inasmuch as that co-sharer would be deemed to be in joint possession of every inch of land till the land is partitioned by metes and bounds.

[5]. In view of aforesaid, at this stage, no indulgence can be granted in favour of the petitioner. Revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

May 31, 2018

Prince

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No